

## Message Text

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ORIGIN EB-11

INFO OCT-01 ARA-16 ISO-00 CIAE-00 COME-00 DODE-00 FMC-04

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R 312132Z JAN 74

FM SECSTATE WASHDC

TO AMEMBASSY BOGOTA

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E.O. 11652: N/A

TAGS: ETRN, CO, US

SUBJECT: FMC ASSERTS CLAIM AGAINST COLOMBIAN STEAMSHIP LINE

1. THE FEDERAL MARITIME COMMISSION (FMC) INFORMED THE DEPARTMENT IT HAS ASSERTED A PRELIMINARY PENALTY CLAIM IN THE AMOUNT OF \$38,000 AGAINST NAVENAL, A COLOMBIAN SHIPPING LINE, UNDER NEW INFORMAL PROCEDURES ESTABLISHED BY PL-42-416 FOR ITS FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 18 (B) 1, SHIPPING ACT, 1916 WITH RESPECT TO ITS NORTHBOUND SERVICE TO PUERTO RICO. SECTION 18 (B) 1 REQUIRES "...EVERY COMMON CARRIER BY WATER IN FOREIGN COMMERCE AND EVERY CONFERENCE OF SUCH CARRIERS SHALL FILE WITH THE COMMISSION...ALL THE RATES AND CHARGES OF SUCH CARRIER OR CONFERENCE OF CARRIERS FOR TRANSPORTATION TO AND FROM UNITED STATES PORTS AND FOREIGN PORTS BETWEEN ALL POINTS ON ITS OWN ROUTE AND ON ANY THROUGH ROUTE WHICH HAS BEEN ESTABLISHED..." FAILURE TO COMPLY WITH THIS PROVISION IS A VIOLATION OF THE LAW AND ANY INFRACTOR IS SUBJECT TO LEGAL PROSECUTION. PL-42-416 OF AUGUST 29, 1972 AMENDED US SHIPPING LEGISLATION BY CONVERTING CRIMINAL PENALTIES PROVIDED THEREIN TO CIVIL PENALTIES IN CERTAIN INSTANCES

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(E.G. THIS ONE) AND GIVES THE FMC THE DISCRETION WHETHER

TO ASSERT A CLAIM AND NEGOTIATE A SETTLEMENT, ITSELF, OR TO REFER THE VIOLATION TO THE DEPARTMENT OF JUSTICE (DOJ) FOR PROSECUTION. PREVIOUSLY, ALL SECTION 18 VIOLATIONS WERE HANDLED BY THE DOJ IN THE FIRST INSTANCE BECAUSE OF THEIR ANTI-TRUST OR CRIMINAL IMPLICATIONS.

2. RECORDS OF THE FMC SHOW NAVENAL'S FIRST NORTHBOUND TARIFF ON FILE IS DATE JULY, 1973, EFFECTIVE AUGUST, SAME YEAR. HOWEVER, BILLS OF LADING AVAILABLE TO THE FMC INDICATE THE LINE TRANSPORTED NORTHBOUND CARGO TO PUERTO RICO PRIOR TO THAT DATE (140 BILLS OF LADING HAVE BEEN IDENTIFIED FOR THE PERIOD DECEMBER, 1971 - DECEMBER, 1972 AND A REVIEW OF THE REMAINING EIGHT MONTHS IS STILL IN PROCESS). THE INITIAL PENALTY CLAIM IS BASED ON 38 BILLS OF LADING (\$1,000 FOR EACH ONE) DATED ON OR AFTER THE EFFECTIVE DATE OF PL-92-416. ADDITIONAL BILLS OF LADING MAY COME TO LIGHT AND COULD RESULT IN AMENDING THE AMOUNT CLAIMED. CONCEIVABLY, THE CLAIM COULD HAVE AMOUNTED TO A LARGER SUM HAD THE CALCULATIONS REFLECTED ALL 140 BILLS OF LADING OR BEEN MADE AT THE MAXIMUM PENALTY RATE OF \$1,000 DAILY ALLOWABLE UNDER SECTION 18 FOR EACH DAY A CARRIER IS FOUND TO BE IN VIOLATION OF THE SECTION.

3. THE FMC HAS SENT A LETTER ASSERTING THE CLAIM TO NAVENAL'S AGENT (FRED IMBERT, INC., P.O. BOX 4424, SAN JUAN, PUERTO RICO 00905), WHO IS LISTED IN THE COMMISSION'S RECORDS AS HAVING FILED THE JULY, 1973 TARIFF SCHEDULE FOR THE LINE. COPY OF THE LETTER WAS ALSO MAILED TO NAVENAL, CARRERA 7A, 16-53, TERCER PISO, (APDO AEREO NO. 4835) BOGOTA.

4. THE NEXT STEP IN THIS INFORMAL PROCEDURE WOULD BE FOR THE FMC AND REPRESENTATIVES OF NAVENAL TO ENTER DISCUSSIONS TO RESOLVE THE MATTER. THE LINE IS UNDER NO LEGAL OBLIGATION TO MEET, NEGOTIATE, AND/OR SETTLE WITH THE FMC. FAILURE TO DO SO, HOWEVER, WOULD RESULT IN THE MATTER BEING REFERRED TO THE DOJ FOR PROSECUTION AND POSSIBLY A MUCH LARGER FINE UPON ADJUDICATION. THEREAFTER, REFUSAL TO PAY ANY FINE SET BY THE COURT WOULD LEAVE THE DOJ NO ALTERNATIVE BUT TO OBTAIN A COURT ORDER LIMITED OFFICIAL USE

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TO ATTACH PROPERTY OF THE LINE FOUND WITHIN UNITED STATES JURISDICTION (E.G. A VESSEL).

5. THIS MATTER IS BROUGHT TO THE EMBASSY'S ATTENTION TO ENABLE THE POST TO BE RESPONSIVE TO ANY INQUIRY THAT MIGHT BE MADE BY THE LINE OR A GOC AGENCY. AND DISCUSSION OF THE CASE SHOULD EMPHASIZE THAT THE NEW PL-92-416 PROCEDURES ARE MORE FLEXIBLE IN THAT THEY ALLOW

THE FMC AND THE INFRACTOR TO NEGOTIATE AN IMMEDIATE  
OUT-OF-COURT SETTLEMENT, AND PRECLUDE THE NECESSITY OF  
LENGTHY AND COSTLY LEGAL PROCEEDINGS. KISSINGER

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## Message Attributes

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**Copy:** SINGLE  
**Draft Date:** 31 JAN 1974  
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**Disposition Approved on Date:**  
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**Disposition Case Number:** n/a  
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